Supreme Court, U.S.
FILED
AUG 20 2003
OFFICE OF THE CLERK

No. 02-1606

In The Supreme Court of the United States

TENNESSEE STUDENT ASSISTANCE CORPORATION,

Petitioner,

v.

PAMELA L. HOOD,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

PAUL G. SUMMERS
Attorney General & Reporter
State of Tennessee

MICHAEL E. MOORE
Solicitor General
Counsel of Record

DARYL J. BRAND
Associate Solicitor General

MARVIN E. CLEMENTS, JR.
Assistant Attorney General
Bankruptcy Division
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-1935
Counsel for Tennessee Student Assistance Corporation

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

ARGUMENT

The Respondent argues that certiorari should not be granted at this time because the issue should be given more time to "ripen." It also asserts that the Sixth Circuit was the first to "correctly" utilize the *Seminole Tribe* analysis, while ignoring the fact that the Seventh Circuit had already reviewed and rejected the precise arguments raised before the Sixth Circuit and come to the opposite conclusion. Thus, there is already a clear split in the Circuits on this precise issue and, as set forth in the petition, the opinions of four other circuits are inconsistent with major aspects of the Sixth Circuit's opinion.

Moreover, Respondent's emphasis on the fact that sovereign immunity touches virtually every function of the bankruptcy process is not a reason to refrain from deciding the issue. To the contrary, it is precisely the reason why the Court should not delay in deciding this crucial issue and reaffirming the considered statements it made in *Seminole Tribe*. And, to the extent that the lower courts are confused about the application of *Seminole Tribe,* as asserted by Respondent at p. 7, that is yet again a reason for the Court to take the petition and provide the necessary clarity.

In light of the "fundamental constitutional protection" that is infringed by this opinion, the State has a right to a ruling sooner, rather than later. Cf. *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 (1993) (providing that interlocutory appeals of denials of immunity are always proper in light of the severe impact on the state's right if the decision is delayed). As the Court noted, the "ultimate justification [for allowing immediate resolution of the immunity issue] is the

importance of ensuring that the States' dignitary interests can be fully vindicated." The same is plainly true here.

Respondent also asserts that the Sixth Circuit's opinion is "clearly correct," that the State misstates and distorts the opinion in various ways, and that, for those reasons, there is also no need to grant certiorari in the case. The State disputes the Respondent's view of its arguments, but its brief speaks for itself in those aspects. However, if the Sixth Circuit *is* correct in its analysis, this is all the more reason for the Court to take this issue and confirm the lower court's view. If the Court now agrees that the Sixth Circuit is correct in disregarding its statements in *Seminole Tribe* about the bankruptcy laws as being merely dicta, then the sooner that is made clear the better. Dozens, if not hundreds of cases, have been decided in the bankruptcy arena since *Seminole Tribe* on the assumption that the Court had already concluded that the bankruptcy laws were covered by its analysis there. If, in fact, this is still an open question, and even if the answer is contrary to the language of *Seminole Tribe's* footnote 16, it is in the interest of all parties dealing with the *1.6 million* bankruptcy cases filed each year to know this as quickly as possible.

CONCLUSION

For all of the reasons cited above and in the Petition, the State respectfully requests that the Court grant certiorari in this case.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General & Reporter
State of Tennessee

MICHAEL E. MOORE
Solicitor General
Counsel of Record

DARYL J. BRAND
Associate Solicitor General

MARVIN E. CLEMENTS, JR.
Assistant Attorney General
Bankruptcy Division
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-1935
Counsel for Tennessee Student Assistance Corporation

AUGUST 2003